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No. 87-42

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1987

DONALD JOSEPH CLIFT, ET AL., PETITIONERS

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTIONS PRESENTED

1. Whether the six-month statute of limitations period applicable to unfair labor practice charges under the National Labor Relations Act, 29 U.S.C. 160(b), is applicable to petitioners' claim under Title I of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. 411-415, alleging that a union has improperly denied certain union members the right to vote on ratification of a proposed collective bargaining agreement, where that claim is joined with allegations under Section 301 of the Labor-Management Relations Act (LMRA), 29 U.S.C. 185, that the union violated its duty of fair representation and the employer violated its obligations under a prior collective bargaining agreement.

2. Whether the claims raised in this case under the LMRDA and the LMRA, 29 U.S.C. 185, were initiated within six months of the accrual of the underlying cause of action.

3. Whether the alleged denial of voting rights by the respondent unions in this case involved sufficient governmental action to require that constitutional due process concerns be satisfied.

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This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States.

STATEMENT

1. Petitioners are four employees of the Indianapolis, Indiana plant of respondent Navistar International Transportation Corp. (Navistar), formerly International Harvester Co. (Pet. App. A3). They were on layoff in early 1982 when, because of its precarious financial condition, Navistar entered into negotiations with the respondent unions, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and its Region 3 and Local 98 (UAW), concerning possible concessions on their existing collective bargaining agreement, which was scheduled to expire in October 1982 (*id.* at A3-A4). The negotiations between Navistar and the UAW culminated, in April 1982, in a ten-

tative agreement that created, among other things, a nationwide Master Recall system under which employees on layoff could fill openings at other Navistar plants (provided that no local employees were on layoff) and carry their existing seniority status to any such openings (*id.* at A4).

On May 2, 1982, the UAW notified its members of the tentative agreement, including the new Master Recall system, held meetings with these members to explain its terms and effects, and submitted the agreement to the members for their ratification (Pet. App. A4). A majority of the members of the local and international unions who participated in the ratification referendum approved the proposed agreement, which then became effective the next day—May 3, 1982 (*ibid.*). Petitioners did not receive special notice of the proposed agreement and were not permitted to vote in the ratification referendum, because the UAW did not consider them to be members in good standing entitled to vote (*ibid.*). See UAW Br. in Opp. 4 n.5 (describing UAW rule concerning who is entitled to vote).

Petitioners, along with all others then on layoff, were recalled to work at the Indianapolis plant in late 1982 and early 1983 (Pet. App. A5, A14). Subsequently, on March 7, 1983, the first of several hundred transferees from other plants arrived at the Indianapolis plant (*id.* at A5). Pursuant to the Master Recall system, the transferees were placed higher on the seniority list—and thus achieved greater layoff and recall rights—than some employees who had worked at the Indianapolis plant prior to the transferees' arrival, including petitioners (*ibid.*). Petitioners complained to Navistar and the UAW, but Navistar and the UAW would not process their claims through the grievance/arbitration system, and the UAW was unwilling to nullify the original ratification vote or to renege on its agreement with Navistar (Pet. 5-6).

Accordingly, on September 6, 1983, some sixteen months after the agreement was ratified but less than six months after the first transferee arrived at the Indianapolis plant, petitioners filed this suit against Navistar and the UAW (Pet. 6; Pet. App. A5). Petitioners alleged, inter alia, that the UAW had failed to provide them with notice of the proposed agreement, to explain the effect that the Master Recall system would have on them, and to respect their right to participate in the ratification referendum (Pet. 6-7; Pet. App. A5). The complaint, as amended, was read by the courts below as asserting violations of: (a) the union's duty of fair representation under the National Labor Relations Act (NLRA), 29 U.S.C. 159(a), enforceable under Section 301 of the Labor-Management Relations Act of 1947 (LMRA), 29 U.S.C. 185; (b) the employer's obligations under the prior collective bargaining agreement, also enforceable under Section 301 of the LMRA; (c) the union member's "bill of rights," set forth in Title I of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. 411-415; and (d) the Due Process Clause of the Fifth Amendment (Pet. App. A5, A17-A18, A21). Petitioners charged that the union's acts deprived them of their rights under the seniority system of the prior collective bargaining agreement and prayed that the district court award them compensatory and punitive damages and enjoin the UAW and Navistar from enforcing the provisions of the new agreement, including the Master Recall system (Pet. 6-7; Pet. App. A5).

2. The district court granted the motions of the UAW and Navistar to dismiss or for summary judgment (Pet. App. A17-A22). Initially, it noted that "hybrid [Section] 301/breach of duty of fair representation claims are subject to the six-month limitations period in [Section] 10(b) of the National Labor Relations Act" (*id.* at A19, citing *DelCostello* v. *International Bhd. of Teamsters*, 462 U.S.

151 (1983)). It further noted that "the Seventh Circuit Court of Appeals has held that the six-month period also applies to claims brought under Title I of the Labor-Management Reporting and Disclosure Act" (Pet. App. A19, citing *Vallone* v. *Local 705, Int'l Bhd. of Teamsters*, 755 F.2d 520 (7th Cir. 1984)). It then determined that these causes of action accrued on May 2, 1982, when the contract was ratified, because "[petitioners] should have known the meaning of the Master Recall List as of [that date]," and because "the new contract was reported in the local media and * * * a union member would have been able to determine when the ratification meeting was to be held" (Pet. App. A20, A21). Finally, the court refused to allow petitioners to add a due process claim to their complaint, stating that "the negotiation of the seniority provisions does not constitute state action" and "[t]he government * * * has not transferred traditional state functions to the union nor has it acted with the private parties in negotiating the contract" (*id.* at A21).

3. The court of appeals affirmed (Pet. App. A2-A16). It noted that, in *DelCostello* v. *International Bhd. of Teamsters, supra*, this Court "decided that in 'hybrid' [Section] 301 suits, involving both employer violations of the collective bargaining agreement and the union's failure to fairly represent the complaining employee, the appropriate limitation period to borrow is the six-month limitation period for unfair labor practices found in [Section] 10(b) of the NLRA" (Pet. App. A8). It rejected petitioners' argument that the instant case is distinguishable from *DelCostello* because the present case is closer to a straightforward contract dispute and involves alleged improprieties during contract negotiations rather than during the grievance process (*id.* at A9-A10). The court noted that, as in *DelCostello*, "this is a suit by individual employees against both the employer and the union," and "the primary dispute in this case concerns whether the

Union acted properly under federal laws controlling its decision-making processes." It thus reasoned that, "[s]ince this case involves a union's duties when negotiating a contract, an issue central to federal labor law, policy considerations favor a uniform statute of limitations," and "[a]n unfair labor practice is a more closely analogous cause of action" than is a breach of contract claim. Accordingly, it held that "the appropriate statute of limitations to apply to the LMRA claims is the six-month limitation period found in [Section] 10(b) of the NLRA" (*id.* at A10-A11).

The court further rejected petitioners' argument "that their LMRDA claims should not have been subjected to the six-month limitation period" (Pet. App. A11). It noted its prior decision in *Vallone* v. *Local 705, Int'l Bhd. of Teamsters, supra*, holding that "the reasoning in *DelCostello* applies equally to both LMRA [Section] 301 claims and claims under sections 411 and 412 of the LMRDA," and on that account applied the six-month limitations period of Section 10(b) of the NLRA, 29 U.S.C. 160(b), to petitioners' LMRDA claims (Pet. App. A11-A12).[1]

The court next rejected petitioners' alternative argument that their claims were filed within the six-month period (Pet. App. A12). It noted that "[t]he claims in this case concern the improper ratification of a collective bargaining agreement" (*ibid.*), and ruled that these claims must have "accrued when the collective bargaining agreement was entered into in May 1982, unless the existence of the

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[1] The court expressly refused to reconsider its earlier decision in *Vallone*, stating that "a number of circuits are in accord with the conclusion we reached in *Vallone*" (Pet. App. A12 n.5), and that the decision of the First Circuit in *Doty* v. *Sewall*, 784 F.2d 1 (1986), is distinguishable because it involved matters concerning neither "the bargaining process nor any grievance with [the individual's] employer" (Pet. App. A12 n.5).

new contract could not reasonably have been discovered until later and was not actually discovered by plaintiffs until later" (*id.* at A13). The court then found that each of the four petitioners either knew or should have known, through the exercise of reasonable diligence, of the existence and contents of the contract more than six months before they filed suit (*id.* at A14-A15). Accordingly, it held that "[t]he LMRA and LMRDA claims [are] time-barred for all four [petitioners]" (*id.* at A15).

Finally, the court affirmed the district court's rejection of petitioners' due process claim (Pet. App. A15). It stated that, "[a]bsent the requisite governmental action, there can be no claim for a denial of constitutional due process" (*ibid.*).

DISCUSSION

Three separate questions are "fairly included" (Sup. Ct. R. 21.1(a)) in petitioners' challenge to the decision of the court below. First is the question whether their claim under Title I of the LMRDA, alleging that the union improperly denied them the right to vote in the ratification referendum, is governed by the six-month limitations period applicable to unfair labor practice charges under the NLRA (Pet. 8-14).[2] Second, petitioners assert (Pet. 18-25) that they in fact initiated their LMRDA and LMRA claims within six months of the accrual of their underlying cause of action. Finally, they urge (Pet. 14-17) that the alleged denial of their voting rights by the respondent unions involved sufficient governmental action to require that constitutional due process concerns be satisfied. In our view, only the first of these questions is an appropriate

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[2] Petitioners apparently do not now dispute that their LMRA claims had to be initiated within that six-month limitations period.

candidate for certiorari review, although the third question is sufficiently similar to the "state action" question raised in *Communication Workers of America* v. *Beck*, cert. granted, No. 86-637 (June 1, 1987), to warrant holding this petition for disposition in light of the Court's judgment in that case.

1. With respect to the limitations period question, the court below held (Pet. App. A7-A12) that the six-month statute of limitations applicable to unfair labor practice charges under the NLRA applies to petitioners' claim under Title I of the LMRDA that the union improperly denied them the right to vote in the ratification referendum held with respect to the proposed collective bargaining agreement. While there is technically no conflict among the circuits on this point, there is substantial confusion among the circuits as to how the statute of limitations question is to be analyzed in an LMRDA Title I case. On balance, we believe that the question is sufficiently important to warrant review by the Court at this time.

a. Where a federal statute does not contain an express statute of limitations for actions brought under its civil enforcement provisions, as is true of Title I of the LMRDA,[3] this Court has said that it will " 'borrow' the most suitable statute or other rule of timeliness from some other source" (*DelCostello* v. *International Bhd. of Teamsters*, 462 U.S. at 158). To identify which limitations period it will so borrow, the Court follows a two-step decision-process: First, it determines whether "a uniform statute of limitations is required to avoid intolerable 'uncertainty and time-consuming litigation.' " *Agency Holding Corp.* v. *Malley-Duff & Assocs.*, Nos. 86-497 &

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[3] Section 102 of the LMRDA, 29 U.S.C. 412, provides that "[a]ny person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate."

86-531 (June 22, 1987), slip op. 6 (quoting *Wilson* v. *Garcia*, 471 U.S. 261, 272 (1985)). Having made that judgment, it then "inquir[es] whether a federal or state statute of limitations should be used" (*Agency Holding Corp.*, slip op. 4), keeping in mind that, with respect to this inquiry, " 'resort to state law remains the norm' " and that a federal statute of limitations should be borrowed only when federal law " 'clearly provides a closer analogy than available state statutes' " and " 'the federal policies at stake and the practicalities of litigation make that rule a significantly more appropropriate vehicle for interstitial lawmaking' " (*ibid.* (quoting *DelCostello* v. *International Bhd. of Teamsters*, 462 U.S. at 171-172)).

We are inclined to believe, in answer to the first inquiry, that a uniform statute of limitations is appropriate for claims under Title I of the LMRDA. Title I creates a "bill of rights" for union members, protecting their rights to speak, assemble, have an equal vote in union affairs, participate in union meetings, seek union office, receive a copy of collective bargaining agreements negotiated by the the union, and have due process protection against unfair union discipline. See 29 U.S.C. 411-415, 529; see generally *Local 82, Furniture Moving Drivers* v. *Crowley*, 467 U.S. 526, 536-537 (1984); *United Steelworkers* v. *Sadlowski*, 457 U.S. 102, 109-110 (1982). As the decisions of the federal courts of appeals evidence,[4] the various types of

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[4] See, *e.g.*, *Reed* v. *United Transp. Union*, 828 F.2d 1066 (4th Cir. 1987) (applying limitations period for unfair labor practice charges under the NLRA); *Doty* v. *Sewall*, 784 F.2d 1 (1st Cir. 1986) (applying limitations period for personal injury claims); *Trotter* v. *International Longshoremen's & Warehousemen's Union, Local 13*, 704 F.2d 1141 (9th Cir. 1983) (applying limitations period for liabilities created by statute); *Dantagnan* v. *I.L.A., Local 1418*, 496 F.2d 400 (5th Cir. 1974) (applying limitations period for breach of contract claims); *Sewell* v. *Grand Lodge of Int'l Ass'n of Machinists & Aerospace Workers*, 445 F.2d 545 (5th Cir. 1971), cert. denied, 404 U.S. 1024 (1972) (applying limitations period for tort claims).

claims that may be brought under this "bill of rights" are similar to a wide range of common law and statutory causes of action. Thus, unless Title I claims are governed by a uniform characterization for limitations period purposes, there will be much unproductive litigation and considerable uncertainty for both LMRDA plaintiffs and defendants. In similar circumstances, this Court has said that there is no reason to believe that Congress would have sanctioned such an interpretation of the substantive federal statute. See *Wilson* v. *Garcia*, 471 U.S. at 274-275 (42 U.S.C. 1983); *Agency Holding Corp.*, slip op. 5-7 (RICO). Absent a compelling justification for treating certain classes of Title I claims differently, we are therefore inclined to believe that a single characterization of all such claims is appropriate.

Assuming that no such justification exists, the task of identifying a uniform statute of limitations does not seem an especially difficult one. Title I of the LMRDA is a kind of federal "civil rights" statute "aimed at enlarged protection for members of unions paralleling certain rights guaranteed by the Federal Constitution." *Finnegan* v. *Leu,* 456 U.S. 431, 435 (1982). Accord, *Doty* v. *Sewall,* 784 F.2d 1, 6 (1st Cir. 1986); *Rodonich* v. *House Wreckers Union, Local 95,* 817 F.2d 967, 976-977 (2d Cir. 1987). In the context of other statutes securing similar basic civil rights against violation by state or private action, this Court has said that the state law limitations period relating to personal injury actions should govern. See *Goodman* v. *Lukens Steel Co.,* No. 85-1626 (June 19, 1987), slip op. 3-4 (2-year state statute of limitations governing personal injury claims applies to claims under 42 U.S.C. 1981); *Wilson* v. *Garcia,* 471 U.S. at 276-280 (3-year state statute of limitations governing personal injury claims applies to claims under 42 U.S.C. 1983). Unless there are very good reasons to depart from this approach, it follows that the

relevant state limitations period for personal injury actions should govern claims under Title I of the LMRDA as well.[5]

b. Pursuant to its earlier decision in *Vallone* v. *Local No. 705, Int'l Bhd. of Teamsters,* 775 F.2d 520, the court below concluded (Pet. App. A11-A12 & n.5) that the decision in *DelCostello* v. *International Bhd. of Teamsters, supra,* requires that the six-month statute of limitations under the NLRA be applied to LMRDA claims such as this one, *i.e.,* LMRDA claims that are factually related to other allegations of improprieties by the union in negotiating a contract or pursuing a grievance on behalf of an employee. The question arises, therefore, whether *DelCostello* mandates a separate statute of limitations for these types of LMRDA claims. We believe that it does not do so.

In *DelCostello,* the Court was presented with a hybrid action under Section 301 of the LMRA alleging that the employer had breached a collective bargaining agreement and that the union had breached its duty of fair representation (462 U.S. at 163). In declining to apply a state law statute of limitations in that instance,[6] the Court in *DelCostello* stressed several factors that made Section 10(b) of the NLRA a "more apt [analogy] than any of the suggested state-law parallels" that might apply to this particular LMRA claim (462 U.S. at 169 (footnote omitted)). Specifically, the Court noted that a "hybrid" breach of

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[5] The State of Indiana, where this action arose, has a 2-year statute of limitations for actions relating to personal injuries (see Ind. Code Ann. § 34-1-2-2 (Burns 1986)), and that statute has been applied to other federal civil rights claims (see, *e.g., Ross* v. *Summers,* 630 F. Supp. 1267 (N.D. Ind. 1986); *Bell* v. *Metropolitan Sch. Dist.,* 582 F. Supp. 3 (S.D. Ind. 1983)).

[6] The Court had previously borrowed from state law in setting the appropriate limitations period for breach of contract actions by unions against employers. See *UAW* v. *Hoosier Cardinal Corp.,* 383 U.S. 696 (1966).

contract/duty of fair representation claim under Section 301 of the LMRA will often, if not always, also amount to an unfair labor practice under the NLRA (462 U.S. at 170); that, in such a case, the LMRA and NLRA actions implicate an identical balance of interests—*i.e.*, " 'the national interests in stable bargaining relationships and finality of private settlements, and an employee's interest in setting aside what he views as an unjust settlement under the collective bargaining system' " (*id.* at 170-171 (citation omitted)); and that substantial practical problems weigh against applying the available state law limitations periods for the breach of contract and unfair representation claims that are inextricably intertwined in this kind of Section 301 action (462 U.S. at 172; see also *id.* at 165-169).

Claims under Title I of the LMRDA, unlike hybrid breach of contract/duty of fair representation actions under Section 301 of the LMRA, will rarely amount to unfair labor practices under the NLRA. Title I claims allege violations of "union democracy," and thus are concerned with the internal operation of the union—*i.e.*, the relationship between union members, the union, and union officers. See *American Postal Workers, Local 6885* v. *American Postal Workers Union,* 665 F.2d 1096, 1109 & n.26 (D.C. Cir. 1981); *Hayes* v. *Consolidated Service Corp.,* 517 F.2d 564, 566 (1st Cir. 1975); *Abrams* v. *Carrier Corp.,* 434 F.2d 1234, 1250-1251 (2d Cir. 1970), cert. denied, 401 U.S. 1009 (1971). Claims under the NLRA, on the other hand, generally relate to matters involving an employee's relationship with his employer and ordinarily do not relate to an employee's relationship with the union structure. See *Kolinske* v. *Lubbers,* 712 F.2d 471, 481 (D.C. Cir. 1983); *Price* v. *UAW,* 795 F.2d 1128, 1133-1135 (2d Cir. 1986). An internal union matter may form the basis for an unfair labor practice charge only if it has a "substantial impact" on the employee's relationship with his employer or impairs a policy clearly embedded in the

NLRA. See, *e.g.*, *Pattern Makers' League of North America* v. *NLRB*, 473 U.S. 95, 102-107 (1985); *International Bhd. of Teamsters, Local 310* v. *NLRB*, 587 F.2d 1176, 1183 & n.31 (D.C. Cir. 1978) (citation omitted). Even then, however, the elements of such an unfair labor practice charge will be distinct from the elements of an LMRDA case arising out of the same set of facts. The unfair labor practice charge will focus on the unequal employment status and impairment of NLRA policies allegedly caused by particular acts of the union, while the LMRDA case will focus on the unequal opportunity to participate in union affairs allegedly caused by those or other actions of the union. *Doty* v. *Sewall*, 784 F.2d at 6-7. Thus, while the unfair labor practice charge provisions provided an appropriate analogy in *DelCostello*, where the LMRA claims also resembled unfair labor practice charges, the same cannot be said here.

For similar reasons, it is clear that LMRDA claims will rarely, if ever, implicate the same balance of interests presented by a hybrid breach of contract/duty of fair representation action brought under Section 301 of the LMRA (or its parallel unfair labor practice charge under the NLRA). To be sure, in some circumstances, as in the case here, an LMRDA claimant may seek relief that affects not only the union but also the finality of a collective bargaining agreement or a private settlement reached under it. To whatever limited extent the LMRDA claimant may obtain such relief, and we do not think that he will be able to do so very often or to any significant degree,[7] the

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[7] The LMRDA governs only internal union affairs and thus LMRDA claims will only rarely require litigation about the meaning, content, or enforceability of the collective bargaining agreement. Further, LMRDA plaintiffs cannot obtain any relief that would require the undoing or renegotiation of a settled collective bargaining agreement, since most retroactive relief relating to the collective bargaining agreement would exceed the "minor" and "ancillary" provisions of an injunction to which the employer, who is not regulated by the

LMRDA claim, like the claims involved in *DelCostello,* will implicate the national interests in stable bargaining relationships and finality of private settlements that inform the choice of limitation periods under the NLRA and the LMRA. But, even in these circumstances, the LMRDA claim, unlike the LMRA claim involved in *DelCostello,* will also involve an allegation that the union has deprived an individual of his statutorily-created right freely to participate in union affairs. Congress did not purport to weigh this interest in the balance when it concluded, in Section 10(b) of the NLRA, that unfair labor practice charges should be governed by a six-month statute of limitations. Accordingly, it cannot be concluded either that such LMRDA claims are essentially the same as those authorized by the NLRA or that the balance of policy concerns at stake is indistinguishable from the balance struck by Section 10(b) of the NLRA.

Finally, the practical litigation problems that concerned the Court in *DelCostello* and that made resort to state law inappropriate are not applicable here. In contrast to the very short state limitations period governing vacation of arbitration awards considered by the Court in *DelCostello,* most if not all states allow their citizens at least one year in which to file personal injury actions. Such a limitations period plainly provides an aggrieved union

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LMRDA, could properly be subjected. See *DelCostello* v. *International Bhd. of Teamsters*, 462 U.S. at 168 n.17 (where employer cannot be sued, equitable remedy such as order to arbitrate cannot be imposed); *General Building Contractors Ass'n* v. *Pennsylvania*, 458 U.S. 375, 399-401 (1982) (party who has not violated substantive rights of plaintiff may only be subjected to "minor" and "ancillary" provisions of an injunctive order). Rather, LMRDA plaintiffs will ordinarily be limited to relief solely against the union, which may include declaratory relief, compensatory damages, and possibly punitive damages. See *Parker* v. *Local Union No. 1466, United Steelworkers of America*, 642 F.2d 104 (5th Cir. 1981); *Christopher* v. *Safeway Stores, Inc.*, 476 F. Supp. 950 (E.D. Tex. 1979), aff'd, 644 F.2d 467 (5th Cir. 1981).

member with an adequate time period in which to attempt to vindicate his LMRDA rights. Cf. *Johnson* v. *Railway Express Agency,* 421 U.S. 454 (1975) (borrowing one-year state law limitations period for enforcement of claim under 42 U.S.C. 1981). Moreover, unlike the LMRA claim at issue in *DelCostello,* which required proof of separate unlawful actions by both the employer and union, the LMRDA claim at issue here requires proof only of unlawful action by the union. Thus, resort to state law will not result in two different limitations periods being applied to the same claim. Finally, a limitations period longer than six months is not inappropriate here, as it was in *DelCostello,* since the LMRDA claim involves an added concern that the right of free participation in union affairs be secured. The Court has held equally long limitations periods appropriate for similar civil rights claims. See *Goodman* v. *Luken Steel Co., supra* (2-year limitations period applied to civil rights claim under 42 U.S.C. 1981); *Wilson* v. *Garcia, supra* (3-year limitations period applied to civil rights claim under 42 U.S.C. 1983).

In short, resorting to Section 10(b) of the NLRA rather than to state law for a statute of limitations to govern actions brought under Title I of the LMRDA does not appear to us to be appropriate. The considerations that made Section 10(b) the appropriate limitations period for "hybrid" LMRA claims do not apply with the same force to *any* LMRDA claim and, furthermore, there is an appropriate state law analogy for *all* such LMRDA claims—*i.e.*, the limitations period governing state law personal injury actions. While *some* LMRDA claims have the potential for disrupting the stability of collective bargaining relationships to some degree, *no* LMRDA claim has the potential for producing any greater degree of disruption than claims initiated under other federal civil rights statutes; and the Court has held that those federal civil rights claims should be governed by state limitation

periods relating to personal injury actions. See, *e.g.*, *Goodman* v. *Lukens Steel Co., supra*. We do not see a sound basis for reaching a different conclusion here.

c. The question remains, of course, whether the contrary judgment of the court below merits review by the Court at this time. The courts of appeals are in conflict about the appropriate statute of limitations to apply to so-called "freestanding" Title I claims—that is, those LMRDA claims that do not seek to set aside the results of the collective bargaining or grievance adjustment process.[8] But the courts agree that LMRDA claims which are joined with breach of contract/duty of fair representation claims under Section 301 of the LMRA (or its analogue under the Railway Labor Act) should be governed by the six-month limitations period applicable to unfair labor practice charges under the NLRA.[9] Since petitioners' LMRDA

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[8] Compare *Doty* v. *Sewall, supra* (applying state limitations period for personal injury claims to denial of union membership to dissident); *Rodonich* v. *House Wreckers Union, Local 95*, 817 F.2d 967 (2d Cir. 1987) (applying state limitations period for personal injury claims to union discipline against members of rival political faction); with *Local Union 1397* v. *United Steelworkers*, 748 F.2d 180 (3d Cir. 1984) (applying six-month limitations period applicable to unfair labor practice charges to union discipline imposed by international union on local union leaders); *Davis* v. *UAW*, 765 F.2d 1510 (11th Cir. 1985), cert. denied, 475 U.S. 1057 (1986) (applying six-month limitations period applicable to unfair labor practice charges to expulsion of dissident union member); *Reed* v. *United Transp. Union*, 828 F.2d 1066 (4th Cir. 1987) (applying six-month limitations period applicable to unfair labor practice charges to internal union dispute regarding reimbursement of officers' expenses).

[9] See, *e.g.*, *Adkins* v. *International Union of Elec. Workers*, 769 F.2d 330 (6th Cir. 1985) (six-month limitations period applicable to LMRA/LMRDA challenge to negotiation and implementation of collective bargaining agreements); *Vallone* v. *Local 705, International Bhd. of Teamsters, supra* (six-month period applicable to LMRA/LMRDA case involving modification of collective bargaining

claims are joined with a "hybrid" LMRA claim, they are of the latter variety and the decision below—holding that they must be brought within six months of the accrual of the underlying cause of action—does not technically conflict with the judgment of any other court.

Nevertheless, we are inclined to believe that the decision below is worthy of certiorari review at this time. As explained above, we think that the courts of appeals have incorrectly applied the six-month statute of limitations of the NLRA to LMRDA claims—both "freestanding" and those joined with hybrid LMRA claims. There is no reason to believe that these courts of appeals will reconsider the position they have taken. Nor is there reason to delay consideration of the question until a more precise circuit conflict develops. The conflict that now exists in the circuits with respect to whether the reasoning of *DelCostello* applies to "freestanding" LMRDA claims explicates the competing approaches and considerations that are necessary to a proper understanding of the statute of limitations issue for all LMRDA claims. Moreover, statute of limitations questions arise in LMRDA actions with some frequency and, if our position is correct, cases are predominantly being decided under an inappropriately short limitations period. Finally, until the Court resolves the question, a large number of plaintiffs will have a perverse incentive to abandon potentially timely LMRA claims in order to ensure that their LMRDA claims are characterized as "freestanding" and not subjected to statute of limitations objections. Neither the LMRA nor the LMRDA is served by such results. Accordingly, this Court's immediate attention seems desirable.

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agreement); *Linder* v. *Berge*, 739 F.2d 686 (1st Cir. 1984) (six-month period applicable to Railway Labor Act/LMRDA claim based on employment-related grievance). See also *Grasty* v. *Amalgamated Clothing & Textile Workers Union*, 828 F.2d 123 (3d Cir. 1987) (six-month period applicable to LMRA/LMRDA claim that union violated its constitution by fraudulently engineering strike vote and failing to pursue grievances).

2. The question whether petitioners initiated their LMRDA and LMRA claims within six months of the accrual of their underlying cause-of-action does not, however, merit review by this Court. The Court has previously held that a claim that a union and an employer have unlawfully entered into an otherwise valid collective bargaining agreement accrues when the agreement is executed and the employees are notified of it. See *Local Lodge No. 1424, Int'l Ass'n of Machinists* v. *NLRB*, 362 U.S. 411, 416-419 (1960) (*Bryan Mfg.*). Here, petitioners' LMRDA claim is that the UAW used an illegal ratification procedure prior to entering into this agreement; thus, the decision in *Bryan Mfg.* is directly applicable and the court below correctly held that petitioners' LMRDA claim accrued "when the collective bargaining agreement was entered into in May 1982, unless the existence of the new contract could not reasonably have been discovered until later and was not actually discovered by plaintiffs until later" (Pet. App. A13). Cf. *United Indep. Flight Officers* v. *United Air Lines*, 756 F.2d 1262, 1273 (7th Cir. 1985) (duty of fair representation claim based on entry into collective bargaining agreement accrues when contract is signed). The remaining issue raised by petitioners—*i.e.*, whether "genuine issues of fact" exist concerning whether petitioners knew or should have known more than six months before they filed suit of the existence of the allegedly unlawful ratification procedure and resulting contract approval (Pet. 20-25)—does not present either a federal question of substantial importance or a question as to which the courts of appeals are in conflict.

3. Nor do we believe that the third question raised by petitioners—*i.e.*, whether the alleged denial of voting rights by the respondent unions in this case involved sufficient governmental action to require that constitutional due process concerns be satisfied—merits plenary review by the Court. As explained in our amicus curiae brief

(filed at the Court's request) in *Communication Workers of America* v. *Beck*, cert. granted, No. 86-637 (June 1, 1987),[10] the United States does not believe that the mere failure by Congress to prohibit a union from engaging in or failing to engage in certain actions is a sufficient basis upon which to find "state action." Thus, in *Beck*, the United States has argued that the Court should decline to find state action arising out a union's use of agency fees collected pursuant to a union security agreement that is not proscribed by Section 8(a)(3) of the NLRA, 29 U.S.C. 158(a)(3). Similarly, here, the United States would argue that no "state action" is involved when a union uses a voting rule that arguably is not proscribed by Section 101 of the LMRDA, 29 U.S.C. 411. Indeed, the Court has already declined to find "state action" in a closely analogous LMRDA context. See *United Steelworkers* v. *Sadlowski*, 457 U.S. 102, 121 n.16 (1982) (union rule determining who may contribute to candidates in union election is not attributable to the state and thus cannot be challenged on First Amendment grounds). But the question is sufficiently similar to the "state action" question in *Beck* to warrant holding the petition for disposition in light of the Court's judgment in that case.

CONCLUSION

The petition for a writ of certiorari should be granted limited to the question whether petitioners' Title I LMRDA claim is governed by the six-month limitations period applicable to unfair labor practice charges under the NLRA. With respect to the question whether the alleged denial of voting rights by the unions in this case in-

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[10] We are providing copies of our *Beck* brief to counsel for petitioners and respondents.

volved sufficient governmental action to require that constitutional due process concerns be satisfied, the petition for a writ of certiorari should be held pending the Court's decision in *Communication Workers of America* v. *Beck*, No. 86-637.

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